

Introduced by Senator Calderon

February 5, 2009

An act to amend Sections 2924, 2924b, 2924c, and 2924f of, and to add Sections 2924.9 and 2924.10 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as introduced, Calderon. Mortgages.

Existing law governs the transfer of an interest in property in the case of a default on a mortgage. Existing law requires a mortgagee, trustee, or other person authorized to record the notice of default or notice of sale to make specified disclosures after recording the notice of default or notice of sale and prior to the date of sale. A notice of sale must be recorded with the county recorder at least 14 days prior to the date of sale.

Existing law exempts a trustee from liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary in performing these and other related acts.

This bill would additionally exempt the trustee from liability for any clerical error the trustee makes in performing acts required pursuant to the provisions described above and other related provisions governing mortgage defaults.

This bill would require a mortgagee, trustee, or other person authorized to record a notice of sale or notice of default to make specified disclosures either on an Internet Web site or in a telephone recording that is accessible 24 hours a day, 7 days a week and make a related change. This bill would also extend the time during which the notice of sale must be recorded from 14 to 20 days.

The bill would require a beneficiary to provide an opening bid to a trustee at least one week prior to the first scheduled sale date. The bill would authorize the beneficiary to update the opening bid prior to the sale, as specified, and would authorize a beneficiary who provides an opening bid to accept a higher bid.

The bill would also require a trustee to provide a list of liens and encumbrances upon a trust property and to charge a reasonable fee for the information, as specified. This provision would exempt the trustee from liability for any good faith error resulting from reliance on information provided in good faith, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924 of the Civil Code is amended to
2 read:

3 2924. (a) Every transfer of an interest in property, other than
4 in trust, made only as a security for the performance of another
5 act, is to be deemed a mortgage, except when in the case of
6 personal property it is accompanied by actual change of possession,
7 in which case it is to be deemed a pledge. Where, by a mortgage
8 created after July 27, 1917, of any estate in real property, other
9 than an estate at will or for years, less than two, or in any transfer
10 in trust made after July 27, 1917, of a like estate to secure the
11 performance of an obligation, a power of sale is conferred upon
12 the mortgagee, trustee, or any other person, to be exercised after
13 a breach of the obligation for which that mortgage or transfer is a
14 security, the power shall not be exercised except where the
15 mortgage or transfer is made pursuant to an order, judgment, or
16 decree of a court of record, or to secure the payment of bonds or
17 other evidences of indebtedness authorized or permitted to be
18 issued by the Commissioner of Corporations, or is made by a public
19 utility subject to the provisions of the Public Utilities Act, until
20 all of the following apply:

21 (1) The trustee, mortgagee, or beneficiary, or any of their
22 authorized agents shall first file for record, in the office of the
23 recorder of each county wherein the mortgaged or trust property
24 or some part or parcel thereof is situated, a notice of default. That
25 notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) After the lapse of the three months described in paragraph (2), the mortgagee, trustee or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary ~~regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage or resulting from any clerical error the trustee makes, despite adherence to procedures intended to prevent the error.~~ In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

SEC. 2. Section 2924.9 is added to the Civil Code, to read:

2924.9. Each beneficiary shall provide an opening bid on property to the trustee at least one week prior to the first scheduled sale date. The beneficiary may update that opening bid at any time prior to the sale, by notifying the trustee of the modification. The trustee shall update its information regarding the sale on its 24-hour telephone recording or Internet Web site with the updated bid as soon as practicable after receiving a revised opening bid from a beneficiary. A beneficiary who provides an opening bid to a trustee may accept a higher bid on the property.

SEC. 3. Section 2924.10 is added to the Civil Code, to read:

2924.10. (a) Upon oral, written, or electronic request by a person, and if known by the trustee, the trustee shall provide a list of the liens and encumbrances upon a trust property as of a date certain, which shall be stated by the trustee when it provides the information.

(b) The trustee may charge a requestor a reasonable fee for providing this information, not to exceed thirty dollars (\$30) per property.

(c) In performing acts required by this section, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by third parties who perform title and records searches.

NOTICE: A copy of any notice of default and of any notice of sale will be

1 sent only to the address contained in this recorded request. If your address
2 changes, a new request must be recorded.

3 Signature _____”

4
5 Upon the filing for record of the request, the recorder shall index
6 in the general index of grantors the names of the trustors (or
7 mortgagor) recited therein and the names of persons requesting
8 copies.

9 (b) The mortgagee, trustee, or other person authorized to record
10 the notice of default or the notice of sale shall do each of the
11 following:

12 (1) Within 10 business days following recordation of the notice
13 of default, deposit or cause to be deposited in the United States
14 mail an envelope, sent by registered or certified mail with postage
15 prepaid, containing a copy of the notice with the recording date
16 shown thereon, addressed to each person whose name and address
17 are set forth in a duly recorded request therefor, directed to the
18 address designated in the request and to each trustor or mortgagor
19 at his or her last known address if different than the address
20 specified in the deed of trust or mortgage with power of sale.

21 (2) At least 20 days before the date of sale, deposit or cause to
22 be deposited in the United States mail an envelope, sent by
23 registered or certified mail with postage prepaid, containing a copy
24 of the notice of the time and place of sale, addressed to each person
25 whose name and address are set forth in a duly recorded request
26 therefor, directed to the address designated in the request and to
27 each trustor or mortgagor at his or her last known address if
28 different than the address specified in the deed of trust or mortgage
29 with power of sale.

30 (3) As used in paragraphs (1) and (2), the “last known address”
31 of each trustor or mortgagor means the last business or residence
32 physical address actually known by the mortgagee, beneficiary,
33 trustee, or other person authorized to record the notice of default.
34 For the purposes of this subdivision, an address is “actually known”
35 if it is contained in the original deed of trust or mortgage, or in
36 any subsequent written notification of a change of physical address
37 from the trustor or mortgagor pursuant to the deed of trust or
38 mortgage. For the purposes of this subdivision, “physical address”
39 does not include an e-mail or any form of electronic address for a
40 trustor or mortgagor. The beneficiary shall inform the trustee of

1 the trustor's last address actually known by the beneficiary.
2 However, the trustee shall incur no liability for failing to send any
3 notice to the last address unless the trustee has actual knowledge
4 of it.

5 (4) A "person authorized to record the notice of default or the
6 notice of sale" shall include an agent for the mortgagee or
7 beneficiary, an agent of the named trustee, any person designated
8 in an executed substitution of trustee, or an agent of that substituted
9 trustee.

10 (c) The mortgagee, trustee, or other person authorized to record
11 the notice of default or the notice of sale shall do the following:

12 (1) Within one month following recordation of the notice of
13 default, deposit or cause to be deposited in the United States mail
14 an envelope, sent by registered or certified mail with postage
15 prepaid, containing a copy of the notice with the recording date
16 shown thereon, addressed to each person set forth in paragraph
17 (2), provided that the estate or interest of any person entitled to
18 receive notice under this subdivision is acquired by an instrument
19 sufficient to impart constructive notice of the estate or interest in
20 the land or portion thereof that is subject to the deed of trust or
21 mortgage being foreclosed, and provided the instrument is recorded
22 in the office of the county recorder so as to impart that constructive
23 notice prior to the recording date of the notice of default and
24 provided the instrument as so recorded sets forth a mailing address
25 that the county recorder shall use, as instructed within the
26 instrument, for the return of the instrument after recording, and
27 which address shall be the address used for the purposes of mailing
28 notices herein.

29 (2) The persons to whom notice shall be mailed under this
30 subdivision are:

31 (A) The successor in interest, as of the recording date of the
32 notice of default, of the estate or interest or any portion thereof of
33 the trustor or mortgagor of the deed of trust or mortgage being
34 foreclosed.

35 (B) The beneficiary or mortgagee of any deed of trust or
36 mortgage recorded subsequent to the deed of trust or mortgage
37 being foreclosed, or recorded prior to or concurrently with the
38 deed of trust or mortgage being foreclosed but subject to a recorded
39 agreement or a recorded statement of subordination to the deed of
40 trust or mortgage being foreclosed.

1 (C) The assignee of any interest of the beneficiary or mortgagee
2 described in subparagraph (B), as of the recording date of the notice
3 of default.

4 (D) The vendee of any contract of sale, or the lessee of any
5 lease, of the estate or interest being foreclosed that is recorded
6 subsequent to the deed of trust or mortgage being foreclosed, or
7 recorded prior to or concurrently with the deed of trust or mortgage
8 being foreclosed but subject to a recorded agreement or statement
9 of subordination to the deed of trust or mortgage being foreclosed.

10 (E) The successor in interest to the vendee or lessee described
11 in subparagraph (D), as of the recording date of the notice of
12 default.

13 (F) The office of the Controller, Sacramento, California, where,
14 as of the recording date of the notice of default, a “Notice of Lien
15 for Postponed Property Taxes” has been recorded against the real
16 property to which the notice of default applies.

17 (3) At least 20 days before the date of sale, deposit or cause to
18 be deposited in the United States mail an envelope, sent by
19 registered or certified mail with postage prepaid, containing a copy
20 of the notice of the time and place of sale addressed to each person
21 to whom a copy of the notice of default is to be mailed as provided
22 in paragraphs (1) and (2), and addressed to the office of any state
23 taxing agency, Sacramento, California, that has recorded,
24 subsequent to the deed of trust or mortgage being foreclosed, a
25 notice of tax lien prior to the recording date of the notice of default
26 against the real property to which the notice of default applies.

27 (4) Provide a copy of the notice of sale to the Internal Revenue
28 Service, in accordance with Section 7425 of the Internal Revenue
29 Code and any applicable federal regulation, if a “Notice of Federal
30 Tax Lien under Internal Revenue Laws” has been recorded,
31 subsequent to the deed of trust or mortgage being foreclosed,
32 against the real property to which the notice of sale applies. The
33 failure to provide the Internal Revenue Service with a copy of the
34 notice of sale pursuant to this paragraph shall be sufficient cause
35 to rescind the trustee’s sale and invalidate the trustee’s deed, at
36 the option of either the successful bidder at the trustee’s sale or
37 the trustee, and in either case with the consent of the beneficiary.
38 Any option to rescind the trustee’s sale pursuant to this paragraph
39 shall be exercised prior to any transfer of the property by the
40 successful bidder to a bona fide purchaser for value. A rescission of

1 the trustee's sale pursuant to this paragraph may be recorded in a
2 notice of rescission pursuant to Section 1058.5.

3 (5) The mailing of notices in the manner set forth in paragraph
4 (1) shall not impose upon any licensed attorney, agent, or employee
5 of any person entitled to receive notices as herein set forth any
6 duty to communicate the notice to the entitled person from the fact
7 that the mailing address used by the county recorder is the address
8 of the attorney, agent, or employee.

9 (d) Any deed of trust or mortgage with power of sale hereafter
10 executed upon real property or an estate for years therein may
11 contain a request that a copy of any notice of default and a copy
12 of any notice of sale thereunder shall be mailed to any person or
13 party thereto at the address of the person given therein, and a copy
14 of any notice of default and of any notice of sale shall be mailed
15 to each of these at the same time and in the same manner required
16 as though a separate request therefor had been filed by each of
17 these persons as herein authorized. If any deed of trust or mortgage
18 with power of sale executed after September 19, 1939, except a
19 deed of trust or mortgage of any of the classes excepted from the
20 provisions of Section 2924, does not contain a mailing address of
21 the trustor or mortgagor therein named, and if no request for special
22 notice by the trustor or mortgagor in substantially the form set
23 forth in this section has subsequently been recorded, a copy of the
24 notice of default shall be published once a week for at least four
25 weeks in a newspaper of general circulation in the county in which
26 the property is situated, the publication to commence within 10
27 business days after the filing of the notice of default. In lieu of
28 publication, a copy of the notice of default may be delivered
29 personally to the trustor or mortgagor within the 10 business days
30 or at any time before publication is completed, or by posting the
31 notice of default in a conspicuous place on the property and mailing
32 the notice to the last known address of the trustor or mortgagor.

33 (e) Any person required to mail a copy of a notice of default or
34 notice of sale to each trustor or mortgagor pursuant to subdivision
35 (b) or (c) by registered or certified mail shall simultaneously cause
36 to be deposited in the United States mail, with postage prepaid and
37 mailed by first-class mail, an envelope containing an additional
38 copy of the required notice addressed to each trustor or mortgagor
39 at the same address to which the notice is sent by registered or
40 certified mail pursuant to subdivision (b) or (c). The person shall

1 execute and retain an affidavit identifying the notice mailed,
2 showing the name and residence or business address of that person,
3 that he or she is over the age of 18 years, the date of deposit in the
4 mail, the name and address of the trustor or mortgagor to whom
5 sent, and that the envelope was sealed and deposited in the mail
6 with postage fully prepaid. In the absence of fraud, the affidavit
7 required by this subdivision shall establish a conclusive
8 presumption of mailing.

9 (f) With respect to separate interests governed by an association,
10 as defined in subdivision (a) of Section 1351, the association may
11 cause to be filed in the office of the recorder in the county in which
12 the separate interests are situated a request that a mortgagee,
13 trustee, or other person authorized to record a notice of default
14 regarding any of those separate interests mail to the association a
15 copy of any trustee's deed upon sale concerning a separate interest.
16 The request shall include a legal description or the assessor's parcel
17 number of the separate interests. A request recorded pursuant to
18 this subdivision shall include the name and address of the
19 association and a statement that it is a homeowners' association.
20 Subsequent requests of an association shall supersede prior
21 requests. A request pursuant to this subdivision shall be recorded
22 before the filing of a notice of default. The mortgagee, trustee, or
23 other authorized person shall mail the requested information to
24 the association within 15 business days following the date the
25 trustee's deed is recorded. Failure to mail the request, pursuant to
26 this subdivision, shall not affect the title to real property.

27 (g) *The mortgagee, trustee, or other person authorized to record*
28 *the notice of sale shall do both of the following:*

29 (1) *Make information available about each property listed for*
30 *sale at least one week prior to the scheduled sale date, as follows:*

31 (A) *The information shall be posted on an Internet Web site or*
32 *in a telephone recording that is accessible 24 hours a day, seven*
33 *days a week.*

34 (B) *The information shall include all of the following:*

35 (i) *Contact name and telephone number.*

36 (ii) *Identifying number for the sale of the property.*

37 (iii) *Date, time, and location of the sale.*

38 (iv) *The estimated total amount of the debt published in the notice*
39 *of the sale.*

40 (v) *Minimum opening bid, if any.*

1 (vi) *Within 24 hours of the scheduled sale date and time, the*
2 *outcome of the auction. If the sale was postponed or canceled, the*
3 *information shall state the rescheduled date, time, and location of*
4 *the sale, and any change in the minimum opening bid. If the*
5 *property was sold, the information shall state the sale price and*
6 *whether the property was sold to a beneficiary or to a third party.*

7 (vii) *A statement that any interested bidder is entitled to request*
8 *information about liens and encumbrances on the property, subject*
9 *to payment of a reasonable fee for that information.*

10 (2) *Correct any errors in the information described in paragraph*
11 *(1) as soon as practicable after identifying the error or being*
12 *informed of the error.*

13 ~~(g)~~

14 (h) No request for a copy of any notice filed for record pursuant
15 to this section, no statement or allegation in the request, and no
16 record thereof shall affect the title to real property or be deemed
17 notice to any person that any person requesting copies of notice
18 has or claims any right, title, or interest in, or lien or charge upon
19 the property described in the deed of trust or mortgage referred to
20 therein.

21 ~~(h)~~

22 (i) “Business day,” as used in this section, has the meaning
23 specified in Section 9.

24 SEC. 5. Section 2924c of the Civil Code is amended to read:

25 2924c. (a) (1) Whenever all or a portion of the principal sum
26 of any obligation secured by deed of trust or mortgage on real
27 property or an estate for years therein hereafter executed has, prior
28 to the maturity date fixed in that obligation, become due or been
29 declared due by reason of default in payment of interest or of any
30 installment of principal, or by reason of failure of trustor or
31 mortgagor to pay, in accordance with the terms of that obligation
32 or of the deed of trust or mortgage, taxes, assessments, premiums
33 for insurance, or advances made by beneficiary or mortgagee in
34 accordance with the terms of that obligation or of the deed of trust
35 or mortgage, the trustor or mortgagor or his or her successor in
36 interest in the mortgaged or trust property or any part thereof, or
37 any beneficiary under a subordinate deed of trust or any other
38 person having a subordinate lien or encumbrance of record thereon,
39 at any time within the period specified in subdivision (e), if the
40 power of sale therein is to be exercised, or, otherwise at any time

1 prior to entry of the decree of foreclosure, may pay to the
2 beneficiary or the mortgagee or their successors in interest,
3 respectively, the entire amount due, at the time payment is
4 tendered, with respect to (A) all amounts of principal, interest,
5 taxes, assessments, insurance premiums, or advances actually
6 known by the beneficiary to be, and that are, in default and shown
7 in the notice of default, under the terms of the deed of trust or
8 mortgage and the obligation secured thereby, (B) all amounts in
9 default on recurring obligations not shown in the notice of default,
10 and (C) all reasonable costs and expenses, subject to subdivision
11 (c), which are actually incurred in enforcing the terms of the
12 obligation, deed of trust, or mortgage, and trustee's or attorney's
13 fees, subject to subdivision (d), other than the portion of principal
14 as would not then be due had no default occurred, and thereby cure
15 the default theretofore existing, and thereupon, all proceedings
16 theretofore had or instituted shall be dismissed or discontinued
17 and the obligation and deed of trust or mortgage shall be reinstated
18 and shall be and remain in force and effect, the same as if the
19 acceleration had not occurred. This section does not apply to bonds
20 or other evidences of indebtedness authorized or permitted to be
21 issued by the Commissioner of Corporations or made by a public
22 utility subject to the Public Utilities Code. For the purposes of this
23 subdivision, the term "recurring obligation" means all amounts of
24 principal and interest on the loan, or rents, subject to the deed of
25 trust or mortgage in default due after the notice of default is
26 recorded; all amounts of principal and interest or rents advanced
27 on senior liens or leaseholds which are advanced after the
28 recordation of the notice of default; and payments of taxes,
29 assessments, and hazard insurance advanced after recordation of
30 the notice of default. Where the beneficiary or mortgagee has made
31 no advances on defaults which would constitute recurring
32 obligations, the beneficiary or mortgagee may require the trustor
33 or mortgagor to provide reliable written evidence that the amounts
34 have been paid prior to reinstatement.

35 (2) If the trustor, mortgagor, or other person authorized to cure
36 the default pursuant to this subdivision does cure the default, the
37 beneficiary or mortgagee or the agent for the beneficiary or
38 mortgagee shall, within 21 days following the reinstatement,
39 execute and deliver to the trustee a notice of rescission which
40 rescinds the declaration of default and demand for sale and advises

1 the trustee of the date of reinstatement. The trustee shall cause the
2 notice of rescission to be recorded within 30 days of receipt of the
3 notice of rescission and of all allowable fees and costs.

4 No charge, except for the recording fee, shall be made against
5 the trustor or mortgagor for the execution and recordation of the
6 notice which rescinds the declaration of default and demand for
7 sale.

8 (b) (1) The notice, of any default described in this section,
9 recorded pursuant to Section 2924, and mailed to any person
10 pursuant to Section 2924b, shall begin with the following
11 statement, printed or typed thereon:

12
13 “IMPORTANT NOTICE [14-point boldface type if printed or
14 in capital letters if typed]
15

16 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
17 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
18 WITHOUT ANY COURT ACTION, [14-point boldface type if
19 printed or in capital letters if typed] and you may have the legal
20 right to bring your account in good standing by paying all of your
21 past due payments plus permitted costs and expenses within the
22 time permitted by law for reinstatement of your account, which is
23 normally five business days prior to the date set for the sale of
24 your property. No sale date may be set until three months from
25 the date this notice of default may be recorded (which date of
26 recordation appears on this notice).

27
28 This amount is _____ as of _____
29 (Date)
30

31 and will increase until your account becomes current.

32 While your property is in foreclosure, you still must pay other
33 obligations (such as insurance and taxes) required by your note
34 and deed of trust or mortgage. If you fail to make future payments
35 on the loan, pay taxes on the property, provide insurance on the
36 property, or pay other obligations as required in the note and deed
37 of trust or mortgage, the beneficiary or mortgagee may insist that
38 you do so in order to reinstate your account in good standing. In
39 addition, the beneficiary or mortgagee may require as a condition
40 to reinstatement that you provide reliable written evidence that

1 you paid all senior liens, property taxes, and hazard insurance
2 premiums.

3 Upon your written request, the beneficiary or mortgagee will
4 give you a written itemization of the entire amount you must pay.
5 You may not have to pay the entire unpaid portion of your account,
6 even though full payment was demanded, but you must pay all
7 amounts in default at the time payment is made. However, you
8 and your beneficiary or mortgagee may mutually agree in writing
9 prior to the time the notice of sale is posted (which may not be
10 earlier than the end of the three-month period stated above) to,
11 among other things, (1) provide additional time in which to cure
12 the default by transfer of the property or otherwise; or (2) establish
13 a schedule of payments in order to cure your default; or both (1)
14 and (2).

15 Following the expiration of the time period referred to in the
16 first paragraph of this notice, unless the obligation being foreclosed
17 upon or a separate written agreement between you and your creditor
18 permits a longer period, you have only the legal right to stop the
19 sale of your property by paying the entire amount demanded by
20 your creditor.

21 To find out the amount you must pay, or to arrange for payment
22 to stop the foreclosure, or if your property is in foreclosure for any
23 other reason, contact:

24
25 _____
26 (Name of beneficiary or mortgagee)

27 _____
28 (Mailing address)

29 _____
30 (Telephone)

31
32 If you have any questions, you should contact a lawyer or the
33 governmental agency which may have insured your loan.

34 Notwithstanding the fact that your property is in foreclosure,
35 you may offer your property for sale, provided the sale is concluded
36 prior to the conclusion of the foreclosure.

37 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**
38 **NOT TAKE PROMPT ACTION.** [14-point boldface type if printed
39 or in capital letters if typed]”

1 Unless otherwise specified, the notice, if printed, shall appear
2 in at least 12-point boldface type.

3 If the obligation secured by the deed of trust or mortgage is a
4 contract or agreement described in paragraph (1) or (4) of
5 subdivision (a) of Section 1632, the notice required herein shall
6 be in Spanish if the trustor requested a Spanish language translation
7 of the contract or agreement pursuant to Section 1632. If the
8 obligation secured by the deed of trust or mortgage is contained
9 in a home improvement contract, as defined in Sections 7151.2
10 and 7159 of the Business and Professions Code, which is subject
11 to Title 2 (commencing with Section 1801), the seller shall specify
12 on the contract whether or not the contract was principally
13 negotiated in Spanish and if the contract was principally negotiated
14 in Spanish, the notice required herein shall be in Spanish. No
15 assignee of the contract or person authorized to record the notice
16 of default shall incur any obligation or liability for failing to mail
17 a notice in Spanish unless Spanish is specified in the contract or
18 the assignee or person has actual knowledge that the secured
19 obligation was principally negotiated in Spanish. Unless specified
20 in writing to the contrary, a copy of the notice required by
21 subdivision (c) of Section 2924b shall be in English.

22 (2) Any failure to comply with the provisions of this subdivision
23 shall not affect the validity of a sale in favor of a bona fide
24 purchaser or the rights of an encumbrancer for value and without
25 notice.

26 (c) Costs and expenses which may be charged pursuant to
27 Sections 2924 to 2924i, inclusive, shall be limited to the costs
28 incurred for recording, mailing, including certified and express
29 mail charges, publishing, and posting notices required by Sections
30 2924 to 2924i, inclusive, *posting information on an Internet Web*
31 *site or making that information available on a 24-hour telephone*
32 *recording, as required by subdivision (g) of Section 2924b,*
33 *postponement pursuant to Section 2924g not to exceed fifty dollars*
34 *(\$50) per postponement and a fee for a trustee's sale guarantee or,*
35 *in the event of judicial foreclosure, a litigation guarantee. For*
36 *purposes of this subdivision, a trustee or beneficiary may purchase*
37 *a trustee's sale guarantee at a rate meeting the standards contained*
38 *in Sections 12401.1 and 12401.3 of the Insurance Code.*

39 (d) Trustee's or attorney's fees which may be charged pursuant
40 to subdivision (a), or until the notice of sale is deposited in the

1 mail to the trustor as provided in Section 2924b, if the sale is by
2 power of sale contained in the deed of trust or mortgage, or,
3 otherwise at any time prior to the decree of foreclosure, are hereby
4 authorized to be in a base amount that does not exceed three
5 hundred dollars (\$300) if the unpaid principal sum secured is one
6 hundred fifty thousand dollars (\$150,000) or less, or two hundred
7 fifty dollars (\$250) if the unpaid principal sum secured exceeds
8 one hundred fifty thousand dollars (\$150,000), plus one-half of 1
9 percent of the unpaid principal sum secured exceeding fifty
10 thousand dollars (\$50,000) up to and including one hundred fifty
11 thousand dollars (\$150,000), plus one-quarter of 1 percent of any
12 portion of the unpaid principal sum secured exceeding one hundred
13 fifty thousand dollars (\$150,000) up to and including five hundred
14 thousand dollars (\$500,000), plus one-eighth of 1 percent of any
15 portion of the unpaid principal sum secured exceeding five hundred
16 thousand dollars (\$500,000). Any charge for trustee's or attorney's
17 fees authorized by this subdivision shall be conclusively presumed
18 to be lawful and valid where the charge does not exceed the
19 amounts authorized herein. For purposes of this subdivision, the
20 unpaid principal sum secured shall be determined as of the date
21 the notice of default is recorded.

22 (e) Reinstatement of a monetary default under the terms of an
23 obligation secured by a deed of trust, or mortgage may be made
24 at any time within the period commencing with the date of
25 recordation of the notice of default until five business days prior
26 to the date of sale set forth in the initial recorded notice of sale.

27 In the event the sale does not take place on the date set forth in
28 the initial recorded notice of sale or a subsequent recorded notice
29 of sale is required to be given, the right of reinstatement shall be
30 revived as of the date of recordation of the subsequent notice of
31 sale, and shall continue from that date until five business days
32 prior to the date of sale set forth in the subsequently recorded notice
33 of sale.

34 In the event the date of sale is postponed on the date of sale set
35 forth in either an initial or any subsequent notice of sale, or is
36 postponed on the date declared for sale at an immediately preceding
37 postponement of sale, and, the postponement is for a period which
38 exceeds five business days from the date set forth in the notice of
39 sale, or declared at the time of postponement, then the right of
40 reinstatement is revived as of the date of postponement and shall

1 continue from that date until five business days prior to the date
2 of sale declared at the time of the postponement.

3 Nothing contained herein shall give rise to a right of
4 reinstatement during the period of five business days prior to the
5 date of sale, whether the date of sale is noticed in a notice of sale
6 or declared at a postponement of sale.

7 Pursuant to the terms of this subdivision, no beneficiary, trustee,
8 mortgagee, or their agents or successors shall be liable in any
9 manner to a trustor, mortgagor, their agents or successors or any
10 beneficiary under a subordinate deed of trust or mortgage or any
11 other person having a subordinate lien or encumbrance of record
12 thereon for the failure to allow a reinstatement of the obligation
13 secured by a deed of trust or mortgage during the period of five
14 business days prior to the sale of the security property, and no such
15 right of reinstatement during this period is created by this section.
16 Any right of reinstatement created by this section is terminated
17 five business days prior to the date of sale set forth in the initial
18 date of sale, and is revived only as prescribed herein and only as
19 of the date set forth herein.

20 As used in this subdivision, the term “business day” has the same
21 meaning as specified in Section 9.

22 SEC. 6. Section 2924f of the Civil Code is amended to read:

23 2924f. (a) As used in this section and Sections 2924g and
24 2924h, “property” means real property or a leasehold estate therein,
25 and “calendar week” means Monday through Saturday, inclusive.

26 (b) (1) Except as provided in subdivision (c), before any sale
27 of property can be made under the power of sale contained in any
28 deed of trust or mortgage, or any resale resulting from a rescission
29 for a failure of consideration pursuant to subdivision (c) of Section
30 2924h, notice of the sale thereof shall be given by posting a written
31 notice of the time of sale and of the street address and the specific
32 place at the street address where the sale will be held, and
33 describing the property to be sold, at least 20 days before the date
34 of sale in one public place in the city where the property is to be
35 sold, if the property is to be sold in a city, or, if not, then in one
36 public place in the judicial district in which the property is to be
37 sold, and publishing a copy once a week for three consecutive
38 calendar weeks, the first publication to be at least 20 days before
39 the date of sale, in a newspaper of general circulation published
40 in the city in which the property or some part thereof is situated,

1 if any part thereof is situated in a city, if not, then in a newspaper
2 of general circulation published in the judicial district in which
3 the property or some part thereof is situated, or in case no
4 newspaper of general circulation is published in the city or judicial
5 district, as the case may be, in a newspaper of general circulation
6 published in the county in which the property or some part thereof
7 is situated, or in case no newspaper of general circulation is
8 published in the city or judicial district or county, as the case may
9 be, in a newspaper of general circulation published in the county
10 in this state that (A) is contiguous to the county in which the
11 property or some part thereof is situated and (B) has, by comparison
12 with all similarly contiguous counties, the highest population based
13 upon total county population as determined by the most recent
14 federal decennial census published by the Bureau of the Census.
15 A copy of the notice of sale shall also be posted in a conspicuous
16 place on the property to be sold at least 20 days before the date of
17 sale, where possible and where not restricted for any reason. If the
18 property is a single-family residence the posting shall be on a door
19 of the residence, but, if not possible or restricted, then the notice
20 shall be posted in a conspicuous place on the property; however,
21 if access is denied because a common entrance to the property is
22 restricted by a guard gate or similar impediment, the property may
23 be posted at that guard gate or similar impediment to any
24 development community. Additionally, the notice of sale shall
25 conform to the minimum requirements of Section 6043 of the
26 Government Code and be recorded with the county recorder of the
27 county in which the property or some part thereof is situated at
28 least ~~14~~ 20 days prior to the date of sale. The notice of sale shall
29 contain the name, street address in this state, which may reflect an
30 agent of the trustee, and either a toll-free telephone number or
31 telephone number in this state of the trustee, and the name of the
32 original trustor, and also shall contain the statement required by
33 paragraph (3) of subdivision (c). In addition to any other
34 description of the property, the notice shall describe the property
35 by giving its street address, if any, or other common designation,
36 if any, and a county assessor's parcel number; but if the property
37 has no street address or other common designation, the notice shall
38 contain a legal description of the property, the name and address
39 of the beneficiary at whose request the sale is to be conducted, and
40 a statement that directions may be obtained pursuant to a written

1 request submitted to the beneficiary within 10 days from the first
2 publication of the notice. Directions shall be deemed reasonably
3 sufficient to locate the property if information as to the location
4 of the property is given by reference to the direction and
5 approximate distance from the nearest crossroads, frontage road,
6 or access road. If a legal description or a county assessor's parcel
7 number and either a street address or another common designation
8 of the property is given, the validity of the notice and the validity
9 of the sale shall not be affected by the fact that the street address,
10 other common designation, name and address of the beneficiary,
11 or the directions obtained therefrom are erroneous or that the street
12 address, other common designation, name and address of the
13 beneficiary, or directions obtained therefrom are omitted. The term
14 "newspaper of general circulation," as used in this section, has the
15 same meaning as defined in Article 1 (commencing with Section
16 6000) of Chapter 1 of Division 7 of Title 1 of the Government
17 Code.

18 The notice of sale shall contain a statement of the total amount
19 of the unpaid balance of the obligation secured by the property to
20 be sold and reasonably estimated costs, expenses, advances at the
21 time of the initial publication of the notice of sale, and, if
22 republished pursuant to a cancellation of a cash equivalent pursuant
23 to subdivision (d) of Section 2924h, a reference of that fact;
24 provided, that the trustee shall incur no liability for any good faith
25 error in stating the proper amount, including any amount provided
26 in good faith by or on behalf of the beneficiary. An inaccurate
27 statement of this amount shall not affect the validity of any sale
28 to a bona fide purchaser for value, nor shall the failure to post the
29 notice of sale on a door as provided by this subdivision affect the
30 validity of any sale to a bona fide purchaser for value.

31 (2) If the sale of the property is to be a unified sale as provided
32 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
33 9604 of the Commercial Code, the notice of sale shall also contain
34 a description of the personal property or fixtures to be sold. In the
35 case where it is contemplated that all of the personal property or
36 fixtures are to be sold, the description in the notice of the personal
37 property or fixtures shall be sufficient if it is the same as the
38 description of the personal property or fixtures contained in the
39 agreement creating the security interest in or encumbrance on the
40 personal property or fixtures or the filed financing statement

1 relating to the personal property or fixtures. In all other cases, the
2 description in the notice shall be sufficient if it would be a
3 sufficient description of the personal property or fixtures under
4 Section 9108 of the Commercial Code. Inclusion of a reference to
5 or a description of personal property or fixtures in a notice of sale
6 hereunder shall not constitute an election by the secured party to
7 conduct a unified sale pursuant to subparagraph (B) of paragraph
8 (1) of subdivision (a) of Section 9604 of the Commercial Code,
9 shall not obligate the secured party to conduct a unified sale
10 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
11 of Section 9604 of the Commercial Code, and in no way shall
12 render defective or noncomplying either that notice or a sale
13 pursuant to that notice by reason of the fact that the sale includes
14 none or less than all of the personal property or fixtures referred
15 to or described in the notice. This paragraph shall not otherwise
16 affect the obligations or duties of a secured party under the
17 Commercial Code.

18 (c) (1) This subdivision applies only to deeds of trust or
19 mortgages which contain a power of sale and which are secured
20 by real property containing a single-family, owner-occupied
21 residence, where the obligation secured by the deed of trust or
22 mortgage is contained in a contract for goods or services subject
23 to the provisions of the Unruh Act (Chapter 1 (commencing with
24 Section 1801) of Title 2 of Part 4 of Division 3).

25 (2) Except as otherwise expressly set forth in this subdivision,
26 all other provisions of law relating to the exercise of a power of
27 sale shall govern the exercise of a power of sale contained in a
28 deed of trust or mortgage described in paragraph (1).

29 (3) If any default of the obligation secured by a deed of trust or
30 mortgage described in paragraph (1) has not been cured within 30
31 days after the recordation of the notice of default, the trustee or
32 mortgagee shall mail to the trustor or mortgagor, at his or her last
33 known address, a copy of the following statement:

34
35 YOU ARE IN DEFAULT UNDER A

36 _____,

37 (Deed of trust or mortgage)

38 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
39 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
40 YOU NEED AN EXPLANATION OF THE NATURE OF THE

1 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
2 LAWYER.

3
4 (4) All sales of real property pursuant to a power of sale
5 contained in any deed of trust or mortgage described in paragraph
6 (1) shall be held in the county where the residence is located and
7 shall be made to the person making the highest offer. The trustee
8 may receive offers during the 10-day period immediately prior to
9 the date of sale and if any offer is accepted in writing by both the
10 trustor or mortgagor and the beneficiary or mortgagee prior to the
11 time set for sale, the sale shall be postponed to a date certain and
12 prior to which the property may be conveyed by the trustor to the
13 person making the offer according to its terms. The offer is
14 revocable until accepted. The performance of the offer, following
15 acceptance, according to its terms, by a conveyance of the property
16 to the offeror, shall operate to terminate any further proceeding
17 under the notice of sale and it shall be deemed revoked.

18 (5) In addition to the trustee fee pursuant to Section 2924c, the
19 trustee or mortgagee pursuant to a deed of trust or mortgage subject
20 to this subdivision shall be entitled to charge an additional fee of
21 fifty dollars (\$50).

22 (6) This subdivision applies only to property on which notices
23 of default were filed on or after the effective date of this
24 subdivision.